IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20/09/2002

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA

W.P.NO. 10426 OF 1997

The Madras Hih Court
Staff Association,
rep. by its President,
New Law Chamber,
Hih Court, Madras,
Chennai 600 104. .. Petitioner

-Vs-

1. The State of Tamil Nadu,
rep. by its Secretary to
Government, Home Department,
Government of Tamil Nadu,
Chennai 600 009.

2. The Reistrar,
Hih Court,
Chennai 600 104. .. Respondents

Petition filed under Article 226 of the Constitution of India for the issuance of Writ of Certiorarified Mandamus as stated therein.

For Petitioner : Mr. Vijay Narayan

For Respondent-1 : Mrs.N.G. Kalaisevi,
Special Govt. Pleader
For Respondent-2 : Mr. Balan Haridass
(Amicuscurie)

:J U D G M E N T

This writ petition has been filed on behalf of the Madras Hih Court Staff Association, a reistered Association representin the employees of the Hih Court of various cateories such as Section Officers, Assistant Section Officers, Assistants, Readers, Examiners, Copyists and Office Assistants, etc., seekin for issuance of Writ of Certiorarified Mandamus for quashin the letter of the first respondent in Ms.No.402, Home Department dated 13.3.1996 and to direct the first respondent to accord sanction for the creation of a separate House Buildin Advance Fund exclusively for the staff

of the Hih Court.

2. On the basis of various administrative instructions issued by the Government of Tamil Nadu, House Buildin Loans are advanced by the Government for various employees. As per the Government instructions, the respective District Collectors are empowered to sanction House Buildin Allowance to various Government employees other than the officers of All India Services, Heads of Departments and Officers and staff employed in the Secretariat. However, for the Heads of Departments, All India Services and Secretariat staff, separate lists are maintained and sanction is made on the basis of seniority in the list from a separate fund. The employees of the Hih Court are included in the list meant for the district.

3. It is the case of the petitioner that historically the employees of the Hih Court have been treated in par with the officers and staff of the Secretariat in service matters such as pay, allowances and other conditions of service. Keepin in view the above aspect, a representation was made on behalf of the petitioner Association to the second respondent, namely the Reistrar of Hih Court for creation of a separate fund for House Buildin Allowance exclusively for the members of the staff of the Hih Court. Such representation was placed before the Hon'ble the Chief Justice of Hih Court, who had recommended to the Government that a separate fund should be allotted exclusively for the staff of the Hih Court. As per the recommendation of the Hon'ble Chief Justice, the Reistrar of the Hih Court addressed letter dated 29.11.1995 in ROC.No.87/95/Con./Estt.III wherein the recommendations of the Hon'ble the Chief Justice were conveyed and a request was made that a separate fund should be allotted for sanction of House Buildin Advance Fund to the employees of the Hih Court. The representation alon with the recommendations were rejected by the Government by the impuned letter dated 13-3-1996. This is bein challened in this writ petition.

4. It is necessary to extract the entire order passed by the Government :-

" . . . I am directed to refer to the letter cited and to state that the Government have examined the proposal of the Hih Court, Madras for allotment of a separate fund exclusively for the staff members of the Hih Court for sanction of House Buildin Advance as in the case of staff members of Secretariat. The allotment of funds to various Departments is made in the Government Order in Districtwise as and when the allotment orders are issued. There is no difficulty in disbursin of house buildin loan throuh the Collector. The constitution of a separate fund exclusively for sanctionin loan to the staff of Hih Court is, therefore, considered not necessary."

5. Learned counsel appearin for the petitioner has submitted that the representation of the employees has been arbitrarily rejected without considerin the recommendation of the Honourable the Chief Justice in its proper perspective.It has been further submitted that the employees of the Hih Court have always been treated at par with Secretariat staff and it is improper on the part of the Government to treat the Hih Court employees in a different manner in the matter relatin to sanction of House Buildin Advance.

It is also submitted that when the representation of the petitioner Association had been placed before the Honourable Chief Justice, suestions have been accepted and a recommendation had been made by the Honourable Chief Justice and notwithstandin such recommendation, the first respondent without accordin proper attention, has rejected the recommendations by merely observin that such loan is made available throuh District Collector and there is no necessity to create a separate fund. In doin so, not only the Government has discriminated the Hih Court employees vis-a-vis Secretariat employees, but also has shown scant respect on the opinion expressed by the Honourable the Chief Justice in administrative side.

6. On behalf of the respondent No.1, a counter affidavit has been filed wherein it has been indicated that there is no necessity to create a separate fund, as necessary loan is bein advanced throuh the District Collector.

7. In the decision reported in 1993 (2) L.W. 159 (A. SUNDARAMURTHY AND 131 OTHERS vs. HIGH COURT OF JUDICATURE, MADRAS, REPRESENTED BY ITS REGISTRAR, HIGH COURT BUILDINGS, MADRAS-600 104 AND OTHERS) while considerin the question of rant of pay at par with ASOs of the Secretariat service, it was observed by this Court :
" . . . I am of the view, as rihtly contended by the learned counsel for the petitioners, that in so far as the Hih Court is concerned, there cannot be any interference whatsoever by the Executive Government of the powers of the Hon'ble Chief Justice of the Hih Court by interferin with the independence of the Judiciary or with the service conditions of the employees of the Hih Court. . . ."

It was further observed

" A Division Bench of this Court consistin of Hon'ble Mr. Mishra and Janarthanam, JJ., in Review Application Nos.72 and 73 of 1991 in Writ Appeal Nos.413 and 414 of 1991 dated 5.12.1991, on an interpretation of Article 229 of the Constitution, has taken the view that when the Hon'ble Chief Justice of the Hih Court makes a recommendation reardin the pay and allowances of officers and servants of the Hih Court, unless there is a compellin and valid reason not to approve, the Government should approve the recommendation. This is the view of the Apex Court also. In the instant case, since the Hon'ble Chief Justice has made the recommendation and the recommendation is based on the benefit extended to similar cateory of employees in the Secretariat Service, who have always been treated on par, it would be rossly arbitrary, illeal and violative of Articles 14 and 16 of the Constitution besides bein in violation of Article 229 of the Constitution, if the recommendation of the Hon'ble Chief Justice is not accepted by the Government."

8. In 1996 WLR 180 (Y. IMMANUVEL AND 32 OTHERS vs. THE GOVERNMENT OF TAMIL NADU, REPRESENTED BY THE COMMISSIONER AND SECRETARY TO GOVERNMENT, HOME SERVICES-I)DEPARTMENT, CHENNAI AND 2 OTHERS) a learned sinle

Jude of this Court had occasion to deal with the scope of Article 229 of the Constitution. While considerin the question of rantin same scale of pay for the Junior Assistants on par with the Readers/Examiners post in the Hih Court, it was observed :

" . . . Article 229 of the Constitution vests in the Hih Court control over its staff in order to free the court from any interference from the Government in relation to the administration of the Court. The nature of the work performed by the officials in the court is best known to the court and not to the Government and when a recommendation is made by the Honourable the Chief Justice to the effect that the work performed by the Readers/Examiners employed in court is similar to that of the Junior Assistant in the Court, and the scale of pay of the two posts should be identical, it is not permissible for the Government to disreard the recommendation and persist in holdin a contrary view. Such an attitude on the part of the overnment is wholly impermissible havin reard to the object of Article 229. The failure on the part of the respondents to act in accordance with the recommendations made by the Honourable the Chief Justice, while recommendation has been reiterated, is in the circumstances of the case, violative of the petitioners' rihts under Article 14 of the Constitution inasmuch as it has denied to them similar treatment in so far as their emoluments are concerned, on par with that of the Junior Assistants."

9. Keepin in view the ratio of the aforesaid decisions, particularly reardin the scope and ambit of Article 229 of the Constitution and keepin in view the avowed intention of the framers of the Constitution reardin independence of Judiciary, it is evident that the respondent No.1 has treated the recommendations of the Honourable the Chief Justice with scant respect and has not iven due weiht to such recommendations.

10. A mere perusal of the order of the Government, which has been extracted earlier, clearly hihlihts the cavalier manner in which the matter has been dealt with by the Government. There is no doubt that historically the employees of the Hih Court are treated at par with the employees of the Hih Court albeit with much reluctance by the Government. It is not disputed that for the employees of the Secretariat, a separate fund has been established for sanction of loan. If the Hih Court employees are treated at par with Secretariat employees in other important aspects, there is no reason as to why they should not be treated so in the matter relatin to advance of house buildin advance also. There is no reason to treat the employees of the Hih Court as any other employees of the District. It has to be remembered that the Hih Court even thouh physically situated within a particular district, is the hihest judicial oran of the State. The question of advancement of loan has also some bearin in the question of administration of the Hih Court and to expect such applications should be forwarded by the Hih Court on each and every occasion to the District Collector would not definitely encourae the concept of independence of Judiciary. Moreover, as observed in the earlier decisions of this Court, when a matter is recommended by the Honourable the Chief Justice, such recommendation is definitely entitled to reat weiht and is not expected to be turned down except for coent reasons. By merely observin that loans are advanced throuh the

Collector and there is no necessity to create a separate fund, I do not think that enouh consideration has been bestowed in the matter.

11. For the aforesaid reasons, the impuned letter dated 13.3.1996 is quashed and the respondent No.1 is directed to reconsider the matter in its proper perspective. This may be done within a period of two months from the date of the communication of the order.

12. Before partin with the case, it is necessary to reflect on one important aspect. It is said that independence of judiciary is a basic feature of the Constitution of India. If the Hih Court is required to approach the executive for every small matter relatin to its employees or even its Judes, like the matters relatin to release of quota for railway tickets, reimbursement of medical bills and payment of telephone bills, etc., the independence of judiciary is likely to be eroded. It is hihtime for the appropriate authorities to think of ensurin insulation of judiciary by makin separate and appropriate arranement for the judiciary in all aspects so that the judiciary would be free from the shackles of the executive in all such matters.

13. Subject to the direction and observation made, the writ application is allowed without any order as to costs.

20-09-2002
Index : Yes
Internet : Yes
dpk

To

1. The State of Tamil Nadu,
rep. by its Secretary to
Government, Home Department,
Government of Tamil Nadu,
Chennai 600 009.

2. The Reistrar,
Hih Court,
Chennai 600 104.

P.K.MISRA.J.

Judment in
W.P.No.10426 OF 1997
((SCO LYRIX 6.1
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